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Subject:

March 15 Green Sheets Express

GREEN SHEETS EXPRESS

The Congressional Green Sheets Environment and Energy Daily Report

MARCH 15, 2002: ON THE SCHEDULE

ON THE FLOOR ...

The Senate convenes at 9:15 a.m. to vote on a judicial nomination, then resumes debate on energy policy legislation (S 517).

The House is not in session.

IN COMMITTEE ...

SENATE APPROPRIATIONS: The energy and water subcommittee holds a hearing on the Department of Energy office of science and nuclear energy programs, and on the office of civilian radioactive waste management, at 1:30 p.m. in 138 Dirksen.

IN THE NEWS

SENATE REJECTS JEFFORDS' PLAN TO BOOST RENEWABLE ENERGY

The Senate on Thursday rejected an attempt by Sen. James Jeffords to strengthen provisions in energy legislation to mandate the share of the nation's electricity generation provided by renewable energy sources.

The amendment by Jeffords (I-Vt.) to S 517, rejected on a 70-29 vote, would have required that 20 percent of the nation's electricity come from renewable energy sources such as biomass, geothermal, wind and solar energy by 2020. Renewables, excluding hydropower, currently provide about 2 percent of electricity.

The Senate acted on several electricity issues during Thursday's energy debate, including interstate transmission reliability standards (see separate story).

After the Jeffords vote Thursday evening, Senate Democratic leaders halted further action on the energy bill. No energy votes are scheduled for today.

Pending is an amendment by Sen. Jon Kyl (R-Ariz.) that would strip out language in the bill to establish a federal renewable portfolio standard of 10 percent by 2020. Some Republicans said action on the energy bill was abruptly halted after the Jeffords vote because the Kyl amendment appeared to have enough votes to pass.

"We don't want to mandate that kind of percentage," Kyl said. "We shouldn't mandate anything."

Senate Majority Leader Tom Daschle (D-S.D.) said the Senate will take up other business today but members can continue to debate and offer amendments to the energy bill. The schedule for next week has not been determined.

Senate Republicans were joined by a number of Democrats in rejecting Jeffords' ambitious proposal. The Bush administration weighed in also, opposing what it said were unfunded federal mandates and calling for a continued voluntary approach by states.

Kyl said he was told by Energy Secretary Spencer Abraham that the Bush administration supported Kyl's amendment to replace the bill's renewable mandate with a voluntary program conducted by states. Kyl said 14 states currently provide some type of renewable energy standard for electric generation and that those types of

efforts should be encouraged.

Senate Energy Chairman Jeff Bingaman (D-N.M.) noted that President Bush, while governor of Texas, signed into law a renewable portfolio standard for the state. Bingaman offered his own substitute amendment based on the Texas plan, which would provide a renewables increase of about 8 percent. The Bingaman amendment is still pending as well.

The energy bill language would establish a trading program of renewable energy credits that could be sold or exchanged, enabling companies that did not meet the renewables standard to buy or exchange for credits from firms that did.

The Jeffords amendment and the energy bill provision were attacked as too costly by opponents. Kyl said the cost of the energy bill's 10 percent renewables requirement would jump to \$10 billion yearly by 2020 from today's \$2 billion a year.

However, Jeffords cited a Department of Energy study concluding that electricity prices would not increase significantly as the result of a 10 percent or 20 percent renewable portfolio standard.

Jeffords said the United States falls well behind other developed nations in its encouragement of renewable energy, and there would be environmental advantages by significantly cutting greenhouse gas emissions.

Bingaman said the American Wind Energy Association predicted that the U.S. wind industry was capable of generating more electricity than the 10 percent called for in the underlying energy bill. Bingaman said other supporters included the American Bioenergy Association, the National Hydropower Association and Florida Power and Light Co., a major Florida electric utility that plans to add 2,000 megawatts of new wind generation over the next two years.

"This is a modest proposal," Bingaman concluded, "but I think it's all we can do given the reality here on the Senate floor."

SENATE ACTS ON ELECTRICITY RELIABILITY; ADDS CONSUMER ADVOCATE

The Senate on Thursday stripped out language in the electricity title of the energy bill that would have given federal regulators more authority to ensure the reliable operation of the nation's transmission system.

Senators approved an amendment offered by Sen. Craig Thomas (R-Wyo.) that would preserve control by individual states and regional power grids over reliability of the interstate transmission grid.

Thomas' amendment was adopted by unanimous consent after a lengthy debate over federal vs. state control. Thomas proposed the amendment at the request of the Western Governors' Association, which objected to giving up authority to the Federal Energy Regulatory Commission.

The amendment was co-sponsored by Sen. Gordon Smith (R-Ore).

Thomas successfully defeated a procedural move by Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), co-sponsor of the Senate energy bill, who raised a budget point of order against the amendment. Thomas made a motion to waive Budget Act restrictions, which was approved on a 60-40 vote -- the required three-fifths majority.

The Thomas language changed section 207 of the electricity title in the energy bill dealing with electricity reliability standards.

The Thomas amendment would provide for the creation of a self-regulating industry electric reliability organization that could make recommendations to states, with an oversight role by FERC. It is similar to a bill (S 2071, S. Rpt. 106-324) passed by unanimous consent in the Senate on June 30, 2000, that stalled in the House.

The Thomas amendment replaces language in the underlying bill that Bingaman said would have granted FERC the authority to mandate electric reliability standards among regional power pools and states to ensure uniform operation of the high-voltage, interstate transmission grid.

Bingaman argued strenuously that the existing scheme of voluntary compliance with industry-sponsored reliability rules is no longer adequate for today's electricity market.

Bingaman said the result of the Senate vote was to absolve FERC of responsibility whenever another electricity crisis occurs, such as in California last year. FERC can point to Congress when regulators are asked why they didn't address interstate transmission problems, Bingaman said.

The bill originally provided that FERC could issue compliance orders to enforce reliability standards. The Thomas amendment sets up a cumbersome process that inhibits FERC from acting quickly in an emergency, Bingaman said.

The electric industry was divided on the reliability issue.

Thomas' approach was backed by the National Association of Regulatory Utility Commissioners; Western Governors' Association; American Public Power Association; the National Rural Electric Cooperative Association; and the North American Electric Reliability Council, an electric utility industry voluntary association.

Michell Gent, president and CEO of the North American Electric Reliability Council, sent a letter to Thomas this week expressing support for the change.

Gent said the Thomas amendment would still permit FERC to provide oversight and coordination across the country, "but unlike the existing language in S 517, your amendment would not have FERC directly promulgating and enforcing reliability rules. This is a responsibility that FERC is ill-prepared to assume."

Gent said the Bush administration and the Canadian Electricity Association also supported the Thomas amendment.

The original bill language was supported by the Mid-Atlantic Area Council, an affiliate of NERC, which said a greater federal role is needed in light of a more competitive, national wholesale market.

The Bingaman language also was supported by the PJM Interconnection, a power pool covering Pennsylvania, Maryland and New Jersey; the Electricity Consumers Resource Council, composed of industrial customers who favor deregulation; Exelon Corp. a holding company with utilities in Chicago and Philadelphia; and the Electric Power Supply Association, composed of energy marketing companies that support deregulation.

CONSUMER ADVOCATE: The Senate approved by unanimous consent an amendment by Sen. Ron Wyden (D-Ore.) to create an office of consumer advocacy within the Department of Justice to represent consumers of electricity and natural gas in proceedings before the Federal Energy Regulatory Commission.

Wyden said the consumer advocacy office would "spotlight unfair price hikes" and would be "an independent watchdog" that could represent consumers on a host of energy issues.

Electricity consumers have become more vulnerable to volatile prices in the electricity and natural gas markets as a result of industry deregulation that relies on out-of-state generators, Wyden said. States lack consumer protection, Wyden said, recalling the blackouts and skyrocketing prices seen over a year ago in California and the Pacific Northwest.

Wyden said he received letters of support from the American Association of Retired Persons, state ratepayer advocates, and public interest groups. A companion bill (HR 3952) was introduced this week in the House by Rep. Peter DeFazio (D-Ore.).

HOUSE FINANCIAL SERVICES PANEL APPROVES BROWNFIELDS BILL

A House Financial Services subcommittee on Thursday approved by voice vote legislation to boost Department of Housing and Urban Development efforts to assist the redevelopment of brownfields.

The Brownfields Redevelopment Enhancement Act (HR 2941) would authorize funds, as needed, for HUD grants to public entities to assist in the environmental cleanup and economic development of brownfield sites. The measure would make it clear that brownfield environmental cleanup and economic development are eligible activities under the Community Development Block Grant program.

"HR 2941 will give communities across the country the tools they need to redevelop brownfields sites and return them to productive use," said subcommittee Chairwoman Marge Roukema (R-N.J.).

The housing and community opportunity subcommittee approved the bill after adopting a manager's amendment in the nature of a substitute that would:

- -- modify and rename the proposal's pilot program for national redevelopment of brownfields (it was named the community empowerment fund pilot program) to allow cities greater flexibility to use HUD grants as leverage for redevelopment loans.
- -- extend appropriations for brownfields activities through fiscal 2007, rather than through fiscal 2004.
- -- drop the requirement for a HUD study reviewing all of the federal government's brownfield redevelopment activities.
- -- make HUD-requested technical changes.

The amendment was offered by Rep. Gary Miller (R-Calif.), the sponsor of HR 2941.

"HR 2941 is a solid bill that will give communities the flexibility they need to redevelop blighted properties into assets," he said.

CONGRESSIONAL GREEN SHEETS, INC.

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MARCH 20, 2002: ON THE SCHEDULE

ON THE FLOOR ...

The House convenes at 10 a.m., and is expected to take up the fiscal 2003 concurrent budget resolution (H. Con. Res. 353). (See March 18 Congressional Green Sheets Weekly Bulletin, p. 1.)

The Senate convenes at 10 a.m. to resume consideration of campaign finance reform legislation, with a cloture vote scheduled for 1 p.m. The Senate also may continue debate of energy policy legislation (S 517). (See news item below.)

IN COMMITTEE ...

HOUSE APPROPRIATIONS: The VA-HUD-independent agencies subcommittee holds a hearing on the fiscal 2003 budget of the Council on Environmental Quality, with testimony from CEQ Chairman James Connaughton, at 11:30 a.m. in H-143 of the Capitol. (See March 18 Weekly Bulletin, p. 14.)

HOUSE RESOURCES (room change): The full committee meets to mark up nearly 20 bills, including a controversial measure to rein in the president's broad authority to designate national monuments, at 10 a.m. in 1324 Longworth. (See March 18 Weekly Bulletin, p. 9.)

HOUSE RESOURCES: The full committee holds a hearing on two bills (HR 2829 and HR 3705) to mandate scientific reviews of the data used to support endangered species protection decisions, at 2 p.m. in 1334 Longworth. (See March 18 Weekly Bulletin, p. 7.)

HOUSE SCIENCE: The full committee holds a markup of a pipeline bill that would authorize \$100 million over five years for research, development and demonstration programs on new technologies to increase security and safety, at 10 a.m. in 2318 Rayburn. (See March 18 Weekly Bulletin, p. 12.)

HOUSE TRANSPORTATION AND INFRASTRUCTURE: The full committee holds a markup of a bill (HR 3930) to re-authorize the clean water state revolving loan fund, at 11 a.m. in 2167 Rayburn. (See news item below.)

SENATE APPROPRIATIONS: The VA-HUD-independent agencies subcommittee holds a hearing on the fiscal 2003 budget of the Environmental Protection Agency, with testimony from EPA Administrator Christie Whitman, at 9:30 a.m. in 138 Dirksen. (See March 18 Weekly Bulletin, p. 14.)

SENATE BANKING: The full committee holds the second of three hearings this week on the Enron collapse, focusing on investor protection and credit issues, at 10 a.m. in 538 Dirksen. (See March 18 Weekly Bulletin, p. 7.)

SENATE BUDGET: The full committee holds a markup of the fiscal 2003 budget resolution, at 10 a.m. in 608 Dirksen. (See news item below).

SENATE ENVIRONMENT AND PUBLIC WORKS: The full committee holds a hearing on legislative initiatives that would impose limits on the shipments of out-of state municipal solid waste and authorize state and local governments to exercise flow control, at 10 a.m. in 406 Dirksen. (See March 18 Weekly Bulletin, p. 6.)

SENATE GOVERNMENTAL AFFAIRS: The full committee holds a hearing on Enron and credit rating agencies as part of a series of hearings to assess the damage caused by the company's bankruptcy, at 9:30 a.m. in 342 Dirksen. (See March 18 Weekly Bulletin, p. 7.)

IN THE NEWS

ACCORD REACHED ON FARM BILL FUNDS ALLOCATION

Leaders of a House-Senate farm bill conference reached agreement on Tuesday on allocation of funds among various programs and expect to make final decisions in public meetings next month, a conference committee statement said.

The statement gave no details, but the top Democrat on the House Agriculture Committee, Rep. Charles Stenholm of Texas, confirmed some of the figures tentatively agreed to, including \$17.1 billion for conservation programs. This figure compared to \$15.79 billion in the House bill and \$21.3 billion in the Senate bill.

The statement was issued late Tuesday after plans for a public meeting of the conference committee earlier in the day fell through because money issues had not been worked out. Numerous major policy issues remain to be resolved in formal conference meetings to be held the week of April 9.

The agreement is consistent with the \$73.5 billion in additional money for farm bill programs over 10 years provided by last year's congressional budget resolution. The Senate bill had been about \$6 billion over budget, according to the Congressional Budget Office.

Senate Majority Leader Tom Daschle (D-S.D.), a member of the conference committee, said the levels agreed to "represent a significant increase in funding for many key agricultural priorities when compared to the House-passed bill."

This included a doubling of funding for nutrition and 80 percent more for conservation, he said. He added that he hoped additional savings could be found and used to increase funding in these two areas.

The House passed its bill (HR 2646, H. Rpt. 107-191) in October. The Senate passed its version (S. Rpt. 107-117) last month.

SENATE DEBATES ROLE OF RENEWABLE ENERGY, TRADING OVERSIGHT

The Senate resumed its energy debate on Tuesday, focusing on the role of renewable energy in electric generatic, and on a proposal to re-regulate energy trading.

No votes on amendments to the bill (S 517) were taken during the day.

The energy debate will be put on hold today, with the Senate scheduled to vote at 1 p.m. on a cloture petition to end a filibuster against a campaign finance reform bill (HR 2356). If successful, a final vote on the bill would come later in the day. The energy debate could resume this afternoon following action on the campaign finance bill.

Senate staff said the much-anticipated vote on drilling in the Arctic National Wildlife Refuge will most likely be put off until after the two-week spring recess, which begins Friday.

On Tuesday, the Senate debated at length an amendment by Sen. Jon Kyl (R-Ariz.) that would strike the bill's provisions to establish a federal renewable portfolio standard. The bill would require utilities to provide 10 percent of their electric generation from renewable energy sources by 2020.

Renewable energy sources would exclude existing hydropower facilities but would include future hydro expansions or new facilities. A credit trading system would be established so that states that could not meet the goal could purchase credits from other states.

The bill would exempt small utilities, municipal power plants, rural cooperatives and federal power agencies such as the Bonneville Power Administration and the Tennessee Valley Authority.

After a day of debate, Senate Majority Whip Harry Reid (D-Nev.) said the Democratic leadership would move to table the Kyl amendment whenever the Senate returns to the amendment, possibly late Wednesday or Thursday.

Kyl said the current language in the energy bill would create an unfunded federal mandate, would be too costly and would discriminate against states not endowed with abundant renewable resources.

Senate Energy Chairman Jeff Bingaman (D-N.M.) called it "a very modest amendment ... it's doable." Bingaman referred to an Energy Information Administration report saying electricity prices would not be greatly

impacted. About a dozen states currently have their own renewable portfolio standards.

Sen. Maria Cantwell (D-Wash.) said the proposal would create about 35,000 jobs in the Pacific Northwest over the next decade as a result of a renewables economic boom.

Sen. Paul Wellstone (D-Minn.) said the amendment would be "a key vote" that helped determine whether he could continue to support the bill, after the Senate defeated an amendment calling for a 50 percent increase in vehicle fuel economy standards.

Kyl cited letters he has received from some state public utility commission and public power groups supporting his effort. Kyl also cited a Department of Energy report that he said concluded that only wind energy had the potential to grow significantly among renewable energy sources over the next decade.

Kyl said DOE estimated the cost at \$88 billion for the first 15 years.

Those costs would be passed on to consumers, he said.

Currently, about 9 percent of U.S. electric generation comes from renewables. Of that amount, about 7.3 percent is hydropower and the remaining 1.7 percent comes from solar, wind, biomass and other renewables.

One bill provision that angered several Republicans from Western states was the bill's exclusion from the definition of biomass any trees, wood waste material or energy crops grown on national forest lands.

The exclusion was added at the request of environmental groups that were concerned about clearcutting in forests, Sen. Larry Craig (R-ldaho) said. However, a number of biomass power plants in Western states currently use national forest lands and could be forced to shut down, Craig said.

Senate Environment and Public Works Committee Chairman James Jeffords (I-Vt.) said a significant increase in renewable energy for electric generation would be cost-effective by reducing the electric industry's reliance on fossil fuels.

Bingaman said DOE estimated that about 80 percent of the nation's electric generation will be derived from two main sources — coal and natural gas — in 20 years unless the trend is reversed.

ENERGY DERIVATIVES: Also on Tuesday, Sen. Dianne Feinstein (D-Calif.) ran into stiff opposition to her amendment to restore the authority of the Commodity Futures Trading Commission over energy trading.

To complicate matters, Senate Minority Leader Trent Lott (R-Miss.) proposed a second-degree amendment to Feinstein's amendment calling for "fair treatment for judicial nominees." The move is part of a growing feud between Lott and Senate Majority Leader Tom Daschle (D-S.D.) over the treatment of judicial nominees.

Feinstein's amendment was debated Tuesday morning and set aside for the debate on renewable energy. It may come up again today or Thursday, staff said.

Negotiations between Feinstein and Sen. Phil Gramm (R-Texas) broke down after several days of talks, Gramm said he feared Feinstein's amendment was too broad, and would jeopardize the entire \$75 trillion financial derivatives market.

Feinstein's amendment is co-sponsored by Sen. Peter Fitzgerald (R-III.), who said energy trading should be subject to regulatory oversight just as other commodities are. Fitzgerald said electronic online trading platforms owned by energy companies and big banks should be subject to the same regulations as regulated exchanges, such as the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange.

Feinstein filed a modified amendment based on her talks with Gramm, but it wasn't changed enough to win the support of the Texas senator.

Gramm said Feinstein's amendment would require the CFTC to regulate not just energy futures contracts, but also bilateral trades, which are contracts between individual buyers and sellers with no standard contract terms.

Feinstein said the vast majority of energy trades are conducted over the counter rather than on regulated exchanges, and to exempt these type of transactions would "gut the bill." Currently, the parties to the energy trades do not have to maintain records for reporting to agencies. "There's no transparency, no record and no oversight," Feinstein said.

Currently, physical deliveries of energy are regulated by the Federal Energy Regulatory Commission. Energy trading that consists of purely financial transactions is not regulated. Feinstein said, "Ninety percent of energy trades are financial trades. ... We don't know their prices or their terms."

"There's a very big loophole here," Feinstein said. "What we seek to do is close that loophole." Feinstein said California's experience with electricity blackouts and high prices, followed by the Enron bankruptcy, required some action on energy trading.

Gramm cited concerns expressed by Federal Reserve Chairman Alan Greenspan in testimony to the Senate Banking Committee that the Feinstein amendment could affect the entire financial derivatives market and not just energy trades. Treasury Secretary Paul O'Neill also opposes the amendment.

Gramm said he would support the amendment if it contained an exemption for metal derivatives, an exemption for energy swaps, a deletion of public disclosure requirements for wholesale trades, and elimination of financial capital requirements for trading companies. Feinstein said she would not agree to those demands.

Gramm said he could support giving the CFTC power to require companies to keep records that could reconstruct transactions in case they were needed, that the records be kept for five years and the fraud provisions be strengthened.

However, Gramm said he wanted to limit CFTC oversight solely to energy futures contracts, and exclude energy swaps and derivatives, in order not to expand CFTC jurisdiction. He also wanted to narrow the scope to electricity and natural gas futures, while excluding other energy commodities, such as oil, and the metals industry.

Gramm suggested that Feinstein withdraw her amendment to have the CFTC, FERC and Securities and Exchange Commission study the matter. The Feinstein amendment is still pending before the Senate and Feinstein did not say what her next course of action will be.

The Bush administration is divided over the proposal. The chairman of the Federal Energy Regulatory Commission, Pat Wood, supports Feinstein's amendment. CFTC Chairman James Newsome opposes it. A letter from Wood to Feinstein said, "I feel strongly customers should have access to market information" Wood called her amendment "a key part of market transparency" that would send "an early warning signal" if there were problems in the markets.

SENATE DEMOCRATS TO UNVEIL BUDGET PLAN

Senate Democrats unveil a fiscal 2003 budget plan today that they claim would pay down more of the national debt over 10 years than President Bush's plan.

Budget Committee Chairman Kent Conrad (D-N.D.) told a news conference on Tuesday that discretionary spending in fiscal 2003 would grow at the same rate as in the president's budget.

Bush's big tax cut, the Sept. 11 terrorist attacks and the economic slowdown "required us to engage in serious fiscal restraint," Conrad said.

The Senate Budget Committee will debate the plan today and consider amendments on Thursday.

Conrad's plan proposes a federal budget deficit of \$90 billion next year, compared with Bush's \$121 billion and the House budget resolution's \$46 billion.

It would fully fund the president's request for defense in fiscal 2003 and 2004 but in the next eight years set aside \$269 billion of Bush's proposed defense buildup as a reserve fund.

If not needed for defense, the money would go to paying down the national debt, Conrad said.

He said that if the reserve fund were not needed, the budget plan would pay down \$502 billion more than the president's budget. If the reserve were needed, the plan would pay down \$233 billion more than the administration's budget would, he said. (For background, see March 18 Weekly Bulletin, p. 4.)

BILL TO REAUTHORIZE CLEAN WATER LOAN FUND GETS COMMITTEE MARKUP

Markup of a bill to reauthorize the clean water state revolving loan fund and increase state flexibility in administering water programs will be held today by the House Transportation and Infrastructure Committee.

The Water Quality Financing Act (HR 3930) was introduced March 12 by Rep. John Duncan (R-Tenn.), chairman of the water resources and environment subcommittee, and Rep. Peter DeFazio (Ore.), the subcommittee's ranking Democrat. A subcommittee hearing on the bill was held March 13.

The bill would authorize \$20 billion over five years for the clean water SRF, which has not been reauthorized since the reauthorization of the Clean Water Act in 1987. The clean water SRF provides funds to states for the construction of wastewater treatment facilities. States must match federal SRF funding by 20 percent.

The bill would change the existing Clean Water Act SRF by:

- -- encouraging investment in non-point source pollution control and watershed approaches to solving water quality problems as well as traditional infrastructure.
- -- encouraging innovative and alternative approaches to solving water quality problems.
- -- encouraging alternative methods of financing water quality improvements.
- encouraging appropriate management of infrastructure assets, including planning for payment of repair and replacement costs.
- requiring states to use at least 15 percent of the federal contribution to their SRFs for assistance to communities with populations under 20,000.
- providing additional subsidies to disadvantaged communities through 30-year repayment programs, forgiveness
 of loan principal and negative-interest loans.
- -- requiring states to use water quality benefits as the primary criteria for determining which projects receive funding.
- -- authorizing technical assistance to small communities.

In a statement issued when the bill was introduced, Duncan said, "Communities nationwide, from our larger urban areas to our smaller communities, will benefit from this legislation. HR 3930 addresses our nation's significant water infrastructure needs by providing incentives to improve infrastructure technology and management and to increase the efficiency of our water protection efforts."

DeFazio said, "While much of Washington is transfixed by the prospects of using an enormous tax cut to boost our economy, I believe investment in water infrastructure should be a vital part of any economic stimulus plan."

AMENDMENT: Reps. Sue Kelly (R-N.Y.) and Ellen Tauscher (D-Calif.) are expected to offer an amendment to bring projects funded under the clean water SRF program under the Davis-Bacon Act, which requires the payment of prevailing wage rates to laborers and mechanics on federal construction projects.

OTHER BILLS: Also on the committee markup agenda are HR 3983, to authorize \$75 million annually in fiscal 2003, 2004 and 2005 in grants for enhanced facility security at U.S. ports; two bills to name federal buildings; and four concurrent resolutions authorizing the use of the Capitol grounds for various events.

WHEN: The markup is scheduled for 11 a.m. Wednesday, March 20, in 2167 Rayburn.

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